IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.2512 OF 1992

M/s.Aluminium Extrusion Centre & Anr... Plaintiffs

Versus

M/s.Transport Corporation of India Ltd. Defendants

Ms.Sneha Dwivedi i/b P.N.Sadarangani for plaintiffs

Mr.Vikas Mahangale i/b H.Mehta & Co. for defendants

CORAM : P.V.KAKADE, J.

DATE : 23RD AUGUST, 2004.

P.C.:

1. The plaintiffs have filed this suit against the defendants for recovery of the amount of Rs.69,780/= along with interest at the rate of 18% p.a. on the said amount from the date of the suit till payment or realisation.

2. The plaintiff no.1 is a partnership firm. Plaintiff

No.2 is a Limited Company and defendants are Transport Corporation of India. The consignment was made over to the defendants on 7.6.1989 for carriage and safe delivery at the destination and accepted by the defendants. At the destination the suit consignment was delivered in damaged condition and defendants have issued their damage certificate dated 21.9.1989. The survey of consignment was conducted and Survey Report dated 23.8.1989 came to be issued. Plaintiff No.1 lodged their claim dated 9.9.1989 with the defendants as required under the provisions of Carriers Act for the loss suffered by the plaintiffs to the extent of Rs.69,780/=. The plaintiff No.1 had insured the goods against all risk in transit to Plaintiff No.2 under Policy No.21/03403 issued by 2nd Plaintiff in favour of the 1st Plaintiff and second Plaintiff have paid to 1st Plaintiff the entire amount and executed a Letter of Subrogation dated 3.8.1989 whereby the 1st Plaintiff assigned to and subrogated to the 2nd Plaintiff all their rights and interest in respect of the said goods including their rights of recovery and to receiver damages from the defendants in respect of the consignment delivered short and in damaged condition. Hence, the suit came to be filed.

3. The defendants have filed their written statement raising various contentions and denying the payment under the suit and sought dismissal of the suit.

4. On the basis of the available pleadings the issues were framed. The issues and my findings thereon are as follows :

ISSUES:	FINDINGS:
1. Whether the plaintiffs prove that Sec.10 notice have been served on the defendants ?	In the affirmative.
2. Whether plaintiffs prove that this Hon’ble Court has jurisdiction to try and decide this suit ?	In the affirmative.
3. Whether plaintiffs prove that the suit consignment has been entrusted to the	

	defendants for carriage from Korba to Bombay ?	In the affirmative.
4.	Whether the defendants prove that they have taken proper care of the consignment and delivered the consignment in sound condition at the destination ?	In the negative.
5.	Whether the suit is filed within the period of limitation?	In the affirmative.
6.	Whether the plaintiffs prove that they are entitled to claim may interest on the sum of Rs.69,780/= from the defendants ?	In the affirmative.
7.	Whether plaintiffs are entitled to any decree against defendants ?	In the affirmative.

8. What order? As per final order.

5. It may be noted that plaintiffs have entered the witness box and has testified in respect of the affidavit of evidence, who was cross examined on behalf of the defendants. However, it is to be noted that nothing worthwhile came in the cross examination. The plaintiffs have also filed compilation of documents which are duly proved on record and they are exhibited as Exhibits-P-3 to P-7 including Letter of Subrogation and Discharge Voucher. On the other hand the defendants did not led any evidence in support of its contentions raised in the written statement.

6. On the basis of the available evidence I hold that the plaintiff no.2 has proved its claim and therefore, the suit is entitled to be decreed. Hence the order:

The suit is decreed with costs.

The defendants shall pay amount of Rs.69,780/= to the Plaintiff No.2 along with interest @ 12%

p.a. on the said amount from the date of the suit till payment or realisation.

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